

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTHUR MALONE BOYD,

Defendant.

CASE NO. CR97-5259(JET)BHS

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT'S MOTION FOR  
RE-SENTENCING

This matter comes before the Court on Defendant's Motion for Re-Sentencing (Dkt. 83). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants in part and denies in part the motion for the reasons stated herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Defendant Boyd was sentenced on December 5, 1997, after a jury found Mr. Boyd guilty on six violations of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 841(b)(1)(B), and 841(b)(1)(C). Dkt. 55. The nature of the offenses were conspiracy to distribute cocaine base, possession of cocaine base with intent to distribute, distribution of cocaine base (two counts), and distribution of heroin (two counts). *Id.* Mr. Boyd had been previously convicted of an offense involving drugs. Dkt. 84 at 2.

1 At sentencing, the Court found that Mr. Boyd's adjusted offense level was 38 and  
2 his criminal history was category III. Dkt. 55. The sentencing range was 292 to 365  
3 months. *Id.* The Court sentenced Mr. Boyd to the low end of that range, 292 months. *Id.*

4 Effective November 1, 2007, the United States Sentencing Commission passed  
5 Amendment No. 706. Guidelines Manual (2007), Appendix C, Amendment 706. The  
6 amendment adjusted downward by two levels the base offense level assigned to each  
7 threshold quantity of crack cocaine (Cocaine Base) listed in the Drug Quantity Table in  
8 § 2D1.1 and provided a mechanism for determining the Guideline range for offenses  
9 involving crack cocaine and other substances. *Id.* As of March 3, 2008, time reductions  
10 for crack cocaine offenders sentenced prior to November 1, 2007, are authorized pursuant  
11 to 18 U.S.C. § 3582(c)(2). *U.S. v. Ross*, 511 F.3d 1233, 1237 n.2 (9th Cir. 2008).

12 On May 29, 2008, Mr. Boyd filed a Motion for Re-Sentencing. Dkt. 83. On June  
13 3, 2008, the U.S. Attorney responded. Dkt. 84. Although both parties agree that Mr.  
14 Boyd is entitled to a two-level reduction in his adjusted offense level, Mr. Boyd argues  
15 that he is also "entitled to a full re-sentencing pursuant to the Ninth Circuit's application  
16 of § 3582(c)(2). Dkt. 84 at 1. A two-level reduction would result in a sentencing range  
17 of 232 to 293 months. Dkt. 85 at 2. The government, however, argues that, based on the  
18 nature of the offense and Mr. Boyd's prior drug conviction, Mr. Boyd is subject to a  
19 mandatory minimum sentence of 240 months. *Id.*

20 Under 21 U.S.C. § 841(b), any person who violates part (a) of that section shall be  
21 sentenced as follows:

22 If any person commits such a violation after a prior conviction for a felony  
23 drug offense has become final, such person shall be sentenced to a term of  
24 imprisonment which may not be less than 20 years and not more than life  
25 imprisonment . . . [A]ny sentence under this subparagraph shall, in the  
26 absence of such a prior conviction, impose a term of supervised release of at  
27 least 5 years in addition to such term of imprisonment and shall, if there was  
28 such a prior conviction, impose a term of supervised release of at least 10  
years in addition to such term of imprisonment.

21 U.S.C. § 841(b). Mr. Boyd was found guilty of violating 21 U.S.C. § 841(a) and had a prior drug offense. *See supra*.

## II. DISCUSSION

A court may modify an imposed term of imprisonment when:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2). Defendant argues that the section 3553(a) factors are applicable to the modification of his term of imprisonment and, therefore, he is entitled to a full re-sentencing hearing. Dkt. 83 at 5-7. Defendant, however, has failed to show how those factors would be applicable to a mandatory minimum term of imprisonment and a mandatory minimum term of supervised relief.

As stated above, Defendant was found guilty of violating 21 U.S.C. § 841(a) and had a prior felony drug offense. Therefore, Defendant's mandatory minimum sentence is 240 months of imprisonment and 10 years of supervised release. Both of the parties agree to a reduction of defendant's original 292-month sentence to 240 months. *See* Dkts. 83 and 84. Defendant was originally sentenced to the low end of the applicable range and the Court finds no reason to impose a sentence greater than the minimum sentence available to Defendant. The Court will grant Defendant's Motion for Re-Sentencing as to a reduced term of 240 months.

Defendant argues that under *United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2007), he is also entitled to a full re-sentencing hearing. Dkt. 83 at 2. In *Hicks*, the defendant was entitled to a re-sentencing based on a new adjusted offense level. *Hicks*, 472 F.3d at 1168-69. The district court re-sentenced the defendant to the low end of the newly adjusted advisory range, 292 months, even though defendant sought a 150-month sentence. *Id.* at 1169. The Ninth Circuit vacated that re-sentencing order and remanded

1 the case for re-sentencing applying post-*Booker* law (*United States v. Booker*, 543 U.S.  
2 220 (2005)). *Hicks*, 472 F.3d at 1171-73. The court stated that: “Mandatory Guidelines  
3 no longer exist, in this context or any other.”

4 In this case, Defendant is subject to a mandatory minimum and not a mandatory  
5 guideline. Defendant has failed to show that, under *Hicks*, he is entitled to re-  
6 consideration of the section 3553(a) factors when he faces a mandatory minimum  
7 sentence. Therefore, the Court denies Defendant’s Motion for Re-Sentencing as to his  
8 request for a re-sentencing hearing, taking into consideration the section 3553(a) factors.


### 9 **III. ORDER**

10 Therefore, it is hereby

11 **ORDERED** that Defendant’s Motion for Re-Sentencing (Dkt. 83) is **GRANTED**  
12 **in part** and **DENIED in part**. Defendant’s term of imprisonment is reduced to 240  
13 months. All other terms of the original sentence (Dkt. 55) remain unchanged.

14 The court clerk shall forward copies of this order to Defendant, to the U.S.  
15 Probation Office (Tacoma), to the Director of the Bureau of Prisons (Federal Bureau of  
16 Prisons, Central Office, 320 First St., NW, Washington D.C. 20534), and to the United  
17 States Sentencing Commission (One Columbus Circle, N.E., Suite 2-500, South Lobby,  
18 Washington, D.C. 20002-8002).

19 DATED this 24th day of June, 2008.

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23 BENJAMIN H. SETTLE  
24 United States District Judge  
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